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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL J. BRIGGS,

Plaintiff and Appellant,

v.

L.A. FITNESS INTERNATIONAL, LLC,

Defendant and Respondent.

G040501

(Super. Ct. No. 06CC02481)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed.

Michael J. Briggs, in pro per., for Plaintiff and Appellant.

Yoka & Smith, Christopher E. Faenza, and Kelly M. Douglas for
Defendant and Respondent.

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The relevant facts and procedural history of this case have been set forth thoroughly in *Briggs v. Cavazos* (Aug. 31, 2009, G040502) (nonpub. opn.) (*Briggs I*). In a nutshell, the parties were involved in a pickup basketball game at an L.A. Fitness International gym (L.A. Fitness). The players got into a physical confrontation in which defendant Ricky Cavazos punched plaintiff Michael Briggs resulting in severe injuries to plaintiff including a fractured cheekbone, damage to the “orbital floor” surrounding the eyeball, and nerve damage. The jury apportioned fault among the parties in the following percentages: Defendant Ricky Cavazos – 60 percent; defendant Juan Cavazos – 5 percent; defendant L.A. Fitness – 0 percent; plaintiff Michael Briggs – 25 percent; and nonparty Jason Briggs – 10 percent. The trial court determined, however, that it had committed a prejudicial evidentiary error affecting the jury’s evaluation of damages, and granted a new trial against the Cavazos defendants on damages only.

In *Briggs I*, we affirmed the court’s order. Plaintiff now appeals the judgment and the new trial order as to the third defendant, L.A. Fitness, which was not a party to the prior appeal. Plaintiff wishes to obtain a new trial on liability as to L.A. Fitness, even though this court has already ruled that the court below appropriately granted a new trial as to damages only (thus excusing L.A. Fitness from further participation in the case).

Plaintiff makes no cogent argument as to why a new trial on liability is required as to L.A. Fitness. His brief focuses again on the evidentiary error regarding damages, an error already corrected by the trial court and affirmed by this court, and simply concludes that “[t]he complex conciliation that takes place in the process of a jury verdict considering both liability and damages is not carried out in a mutually exclusive vacuum but rather in an interplay of one-against-the other.” Plaintiff makes no effort to demonstrate why the evidence in the first trial did not support the jury’s finding that L.A. Fitness was not liable to plaintiff for his injuries. For the reasons stated in *Briggs I*, we again affirm the court’s postjudgment order granting plaintiff a new trial as to the issue of

damages only. In sum, those reasons were: (1) “[T]he jury allocated liability amongst the various parties in applying principles of comparative negligence, and the percentage allocations reflect a balanced weighing of the evidentiary record”; (2) “the legal error providing the basis for a new trial was the exclusion of evidence pertaining solely to damages, not liability”; and (3) “no undue prejudice would result to any part[y] by restricting the new trial to damages.” (*Briggs I, supra*, [non.pub. opn.].)

The judgment and postjudgment order are affirmed. Defendant L.A. Fitness shall recover its costs on appeal.

IKOLA, J.

WE CONCUR:

O’LEARY, ACTING P. J.

MOORE, J.